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6
7 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

8 DOLORES J. MURPHY, as Trustee of the
9 CHARLES M. MURPHY
ADMINISTRATIVE TRUST,

10 Plaintiff,

11 v.

12 UNITED STATES OF AMERICA.,

13 Defendant.

14 No. 1:24-cv-00260-KES-BAM

15 **[PROPOSED] ORDER RE**
STIPULATION TO CONTINUE JOINT
SCHEDULING REPORT DEADLINE
AND MANDATORY SCHEDULING
CONFERENCE (ECF NOS. 31, 35)

16 Plaintiff Dolores J. Murphy, as Trustee of the Charles M. Murphy Administrative Trust
17 (the “Administrative Trust”), initiated this suit for refund of tax/civil penalties against Defendant,
18 the United States of America, on February 29, 2024. (ECF No. 1.) Defendant, the United States
19 of America’s Answer or other responsive pleading in this case was due on August 5, 2024. The
initial mandatory scheduling conference is currently scheduled for April 21, 2025. (ECF No. 31).

20 On August 5, 2024, Defendant the United States filed a Notice of Motion to Dismiss
21 (ECF No. 17), United States’ Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and
22 12(b)(6) and Memorandum in Support (ECF No. 17-1), (hereinafter referred to as “Defendant
23 United States’ Motion to Dismiss”), and Declaration of Brian D. Johnson in Support of the
24 United States’ Motion to Dismiss (ECF No. 17-2).

25 On August 19, 2024, counsel for Plaintiff Dolores J. Murphy, as Trustee of the
26 Administrative Trust, filed Plaintiff’s Opposition to Defendant’s Motion to Dismiss Pursuant to
27 Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (ECF No. 19) and Declaration of Craig A. Houghton in

1 Support of Plaintiff's Opposition to Defendant's Motion to Dismiss Pursuant to Fed. R. Civ. P.
2 12(b)(1) and 12(b)(6) (ECF No. 19-1).

3 On August 22, 2024, the Court filed a Minute Order (ECF No. 20) ordering Robert C.
4 Bombard to file a declaration detailing the parties' meet and confer efforts prior to the filing of
5 Defendant United States Motion to Dismiss and Supporting Memorandum and Declaration.

6 On August 26, 2024, Robert C. Bombard filed the Declaration of Robert C. Bombard
7 (ECF No. 21) pursuant to the Court's August 22, 2024, Minute Order (ECF No. 20).

8 On August 28, 2024, Defendant United States filed United States' Reply to Plaintiff's
9 Opposition to Defendant's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6)
10 (ECF No. 22).

11 On August 30, 2024, Connor J. Pestovich filed a Notice of Appearance in this case (ECF
12 No. 23) with the Court to cover this case for Robert C. Bombard during his upcoming family
13 leave for several months. In early December of 2024 Mr. Bombard returned from his family
14 leave and resumed the role as lead counsel for Defendant United States in this case,

15 Per Minute Orders filed by the Court on September 16, 2024, and September 18, 2024,
16 (ECF Nos. 24 and 25), the Court set the hearing on Defendant United States' Motion to Dismiss
17 for November 4, 2024. The hearing on Defendant United States' Motion to Dismiss was held and
18 argued before the Honorable Kirk E. Sherriff on November 4, 2024. After the hearing, the Court
19 filed a Minute Order (ECF No. 27) allowing Plaintiff Dolores J. Murphy, as Trustee of the
20 Administrative Trust, to file a supplemental memorandum of points and authorities in support of
21 Plaintiff's Opposition to Defendant United States' Motion to Dismiss and Supporting
22 Declaration by November 4, 2024, and Defendant United States to file a reply thereto by
23 November 25, 2024, and to then take the matter under submission.

24 On November 4, 2024, Plaintiff Dolores J. Murphy, as Trustee of the Administrative
25 Trust, filed her Supplemental Memorandum of Points and Authorities Regarding the Proper
26 Determination of Reasonable Cause and No Willful Neglect Under 26 U.S.C. §§ 6651(a)(1) and
27 6651(a)(2) (ECF No. 28).

1 On November 25, 2024, Defendant United States filed United States' Response to
2 Plaintiff's Supplemental Memorandum of Points and Authorities Regarding the Proper
3 Determination of Reasonable Cause and No Willful Neglect Under 26 U.S.C. §§ 6651(a)(1) and
4 6651(a)(2) (ECF No. 29).

5 On January 13, 2025, the parties filed a Stipulation to Continue Joint Scheduling Report
6 Deadline and Mandatory Scheduling Conference (ECF No. 30) stipulating to a continuance of
7 the mandatory scheduling conference by ninety (90) days. On January 14, 2025, the Court issued
8 an Order Re Stipulation to Continue Joint Scheduling Report Deadline and Mandatory
9 Scheduling Conference (ECF No. 31) granting that stipulation and set the mandatory scheduling
10 conference for April 21, 2025.

11 On February 18, 2025, the Court issued an Order Denying in Part and Granting in Part
12 Defendant's Motion to Dismiss (ECF No. 32).

13 On March 4, 2025, Defendant United States filed United States' Answer to the Complaint
14 (ECF No. 33).

15 On March 18, 2025, Robert C. Bombard, former lead counsel for Defendant United
16 States in this case, filed a Notice of Withdrawal of Robert C. Bombard (ECF No. 34) notifying
17 the Court that he will be temporarily detailed to another component of the Department of Justice
18 for a period of six month that will not permit him to work on his Tax Division cases for the
19 duration of the detail, and that Connor J. Pestovich, another Trial Attorney with the Tax Division
20 who has appeared for Defendant United States in this case (ECF No. 23), will become new lead
21 counsel for Defendant United States in this case.

22 The parties have proffered that in late February and early March of 2025, counsel for
23 Plaintiff Dolores J. Murphy, as Trustee of the Administrative Trust, and Mr. Bombard, as former
24 lead counsel for Defendant United States, exchanged e-mail messages regarding both a proposed
25 settlement recommendation of this case by Defendant United States and Plaintiff Dolores J.
26 Murphy's, as Trustee of the Administrative Trust, questions and response thereto and position
27 regarding the merits of Plaintiff's case and a possible basis of settlement of this case.

1 The parties have also proffered that on April 4, 2025, counsel for Plaintiff Dolores J.
2 Murphy, as Trustee of the Administrative Trust, and Mr. Pestovich, as new lead counsel for
3 Defendant United States, continued settlement discussions regarding this case, including an
4 alternate settlement proposal of this case by Plaintiff Dolores J. Murphy, as Trustee of the
5 Administrative Trust, but Mr. Pestovich, as new lead counsel for Defendant United States, in this
6 case will need time to become more familiar with the background, relevant facts, and issues in
7 this case to continue these settlement discussions with counsel for Plaintiff Dolores J. Murphy, as
8 Trustee of the Administrative Trust,

9 On April 10, 2025, the counsel for the parties filed a Stipulation to Continue Joint
10 Scheduling Report Deadline and Mandatory Scheduling Conference (ECF No. 35), stipulating to
11 a continuance of the mandatory scheduling conference by thirty (30) days to May 21, 2025, or
12 such other date as may be determined by the Court. The counsel for the parties agreed to this
13 stipulation because Defendant United States' current counsel of record needed additional time to
14 review the case's files, filings, and history to help meaningfully develop a discovery plan as well
15 as to explore the possibility of resolving this case without further litigation, including the
16 alternate settlement proposal of this case made by Plaintiff Dolores J. Murphy, as Trustee of the
17 Administrative Trust, on April 4, 2025 .

18 The Court finds that good cause exists to grant the requested extension of the mandatory
19 scheduling conference in this case.

20 Accordingly, IT IS HEREBY ORDERED that:

21 1. The Mandatory Scheduling Conference currently set for April 21, 2025, is
22 continued to **May 28, 2025, at 9:00 AM in courtroom 8 (BAM) before Magistrate Judge**
23 **Barbara A. McAuliffe**. The parties shall appear at the conference remotely via Zoom video
24 conference. The parties will be provided with the Zoom ID and password by the Courtroom
25 Deputy prior to the conference. The Zoom ID number and password are confidential and are not
26 to be shared. Appropriate court attire required; and

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1 2. The parties shall file a joint scheduling report seven (7) days prior to the
2 scheduling conference.

3 IT IS SO ORDERED.
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5 Dated: April 11, 2025

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6 /s/ *Barbara A. McAuliffe*

6 UNITED STATES MAGISTRATE JUDGE